TIMOTHY J. LANDACRE, Employee/Appellant, v. LAKEWOOD INDUS. and STATE FUND MUT. INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 16, 1999

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - SUBD. 7 FEES; RULES CONSTRUED - MINN. R. 1415.3200, SUBP. 6. The compensation judge erred in denying the employee's claim for partial reimbursement of fees pursuant to Minn. Stat. § 176.081, subd. 7a, based on the employee's failure to comply with Minn. R. 1415.1900, subp. 6, because, by setting time limitations not specified by the statute, the rule impermissibly conflicts with the statute, under which an award is mandatory.

Reversed.

Determined by Wilson, J., Wheeler, C.J., and Hefte, J.
Compensation Judge: Gregory A. Bonovetz.

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's decision that the employer and insurer are not obligated to pay partial reimbursement of attorney fees pursuant to Minn. Stat. § 176.081, subd. 7a, because the employee failed to comply with Minn. R. 1415.3200, subp. 6. We reverse.

BACKGROUND

On March 8, 1988, the employee sustained a work-related injury to his lower extremities while employed by Lakewood Enterprises [the employer], and on January 5, 1996, he filed a claim petition seeking permanent partial disability benefits for a 15% whole body impairment. The employer and its workers' compensation insurer denied liability for the 15% impairment, claiming that the employee's condition warranted no more than a 0% rating.

On August 21, 1996, the employee offered to settle his permanency claim, on a to-date basis, for $8,500, with a closeout to 15% permanent partial disability. At a subsequent settlement conference on October 30, 1996, the parties were unable to resolve the dispute. The matter proceeded to hearing on June 5, 1997, at which time the employee was claiming entitlement to benefits for 15% permanency, to contingent fees, and to partial reimbursement of attorney fees pursuant to Minn. Stat. § 176.081, subd. 7. On July 28, 1997, the compensation judge filed a

Findings and Order awarding the employee benefits for a 12% whole body impairment ($9,000), contingent fees, and subdivision 7 fees.

On September 4, 1997, the employee filed an amended claim petition seeking payment of attorney fees under Minn. Stat. § 176.081, subd 7a, in the amount of $437.50. The employer and insurer answered that these fees were not properly awardable as they were not claimed at the time of the hearing. The matter proceeded to hearing on stipulated facts. In a decision filed on November 5, 1998, the compensation judge denied the employee's claim based on the employee's failure to comply with Minn. R. 1415.3200, subd. 6.A. The employee appeals.

STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo. Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

> Minn. Stat.§ 176.081, subd. 7a, provides in part as follows:
>
> At any time prior to one day before a matter is to be heard, a party litigating a claim made pursuant to this chapter may serve upon the adverse party a reasonable offer of settlement of the claim, with provision for costs and disbursements then accrued. . . .
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> * * *
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> If an offer by an employee is not accepted by the employer or insurer, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is at least as favorable as the offer, the employer shall pay an additional 25 percent, over the amount provided in subdivision 7, of that portion of the attorney's fees which has been awarded pursuant to this section that is in excess of $250.

(Emphasis added.) It is stipulated in the present case that the employee offered a to-date settlement of $8,500 for a close-out of permanency to 15% on August 21, 1996, and that the compensation judge ultimately awarded $9,000 in permanent partial disability benefits. Therefore, the requirements of subdivision 7a itself have been satisfied. However, the employee failed to comply with Minn. R. 1415.3200, subp. 6, which provides in relevant part:

> In cases where an offer or settlement has been made in writing under

> Minnesota Statutes, section 176.081, subdivision 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure must be followed:
>
> A. The party seeking to impose the sanctions of Minnesota Statutes, section 176.081, subdivision 7a, shall file proof of the offer with the chief administrative law judge and serve the other parties within ten calendar days of the date of the compensation judge's decision. The filing must include an order prepared for signature by the chief administrative law judge amending the compensation judge's decision.

(Emphasis added.) Relying on this rule, the compensation judge denied the employee's claim for reimbursement of fees pursuant to subdivision 7a.

On appeal, the employee contends that "[a]n administrative rule cannot abrogate a party's statutory right to attorney's fees," and he relies on the cases of Scalf v. LaSalle Convalescent Home, 481 N.W.2d 364, 46 W.C.D. 283 (Minn. 1992), and Green v. Whirlpool Corp., 389 N.W.2d 504, 38 W.C.D. 713 (Minn. 1986), in support of his position. We are compelled to agree with the employee's arguments.

There are several statutory provisions governing agency authority to promulgate workers' compensation administrative rules. As to attorney fees specifically, Minn. Stat. § 176.081, subd. 6, provides that [t]he commissioner, office of administrative hearings, and the workers' compensation court of appeals may adopt reasonable and proper joint rules to effect each of their obligations under this section." Other provisions indicate that the commissioner "may adopt, amend, or repeal rules to implement the provisions of this chapter," including joint rules "with either or both the workers' compensation court of appeals and the chief administrative law judge which may be necessary in order to provide for the orderly processing of claims or petitions made or filed pursuant to this chapter." Minn. Stat. § 176.83, subds. 1 and 10. The authority described is on its face quite broad. However, Scalf and Green, the cases cited by the employee, establish that rules must reasonably implement provisions of the statute and that, if there is a conflict, the statute governs.

Scalf involved an apparent conflict between Minn. Stat. §176.155, subd. 5, which provides that most medical evidence at workers' compensation hearings be submitted by written report, and Minn. R. 1415.1900, subp. 7, which provides that reports not disclosed at a prehearing conference may not be submitted at hearing (with certain exceptions). The Minnesota Supreme Court held that the compensation judge should not have excluded from evidence a medical report first disclosed at the hearing. The court's holding was arguably based in part on the conclusion that admission of the report would not have violated the rule. However, the court went on to state that, "[t]o the extent, however, that the limitation on the admissibility of medical reports set out in Minn. R. 1415.1900, subp. 7, conflicts with Minn. Stat. § 176.155, subd. 5 (1990), the statute prevails." Scalf, 481 N.W.2d at 366, 46 W.C.D. at 286. The Green case involved a conflict

between the statute addressing defaults and the corresponding rules. Addressing the conflict, the court explained that "while administrative agencies may adopt regulations to implement or make specific the language of a statute, they cannot adopt a conflicting rule." Green, 389 N.W.2d at 506, 38 W.C.D. at 716. Because the rule in question imposed several requirements having no counterpart in the statute, the court deemed the rule "of no effect" and held that it could not "govern a party's right to obtain an award on default." Id. at 507, 38 W.C.D. at 718.

Minn. Stat. §176.081, subd. 7a, the statute in question in the present case, provides for the mandatory payment of an additional 25% as partial reimbursement of attorney fees in the circumstances found in the instant case. There is nothing discretionary about the payment; the statute reads "the employer shall pay . . . ." Minn. R. 1415.3200, subp. 6, however, imposes time requirements which, when enforced, may operate to deprive employees of benefits to which they are otherwise clearly entitled. The rule therefore conflicts with the statute and cannot be considered reasonable or proper.[1] It is the statute that must be followed.

For the above stated reasons, we reverse the judge's finding that the employee's failure to comply with Minn. Rule 1415.3200, subp. 6, bars the employee from receiving an additional 25% reimbursement pursuant to Minn. Stat. § 176.081, subd. 7a.

[1] This court and the Minnesota Supreme Court have enforced some rules that place time limitations on actions, despite the lack of corresponding time limitations in the statute. See Georges v. Reserve Mining Co., 49 W.C.D. 1 (W.C.C.A. 1993), and Kvenvold v. Freeborn County Sheriff's Dept., ___ N.W.2d ___, ___ W.C.D. ___ (Minn. 1999). However, in both of those cases, the awards were discretionary under the statute (attorney fees in Georges and costs and disbursements in Kvenvold), whereas, in the present case, the award is mandatory. We therefore find the cases distinguishable.